MOHD NOOR ABDULLAH

v.

NORDIN ZAKARIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[CIVIL SUIT NO: S2-21-166-1997]
23 AUGUST 1999

POLICE: *Disciplinary proceedings - Dismissal - When should officer facing charges be informed of possible sentence if found guilty - Officer informed after being found guilty but before mitigation - Whether amounts to breach of audi alteram partem rule - Officer claimed trial to charges and engaged counsel - Whether may be inferred that officer aware of possible sentence if found guilty - Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 - Public Officers (Conduct and Discipline) Regulations 1993 (Cap D), reg. 28(1)*

Having been found guilty of certain charges at an Orderly Room Proceedings pursuant to the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 and consequently being dismissed from the police force, the plaintiff brought this action praying for, *inter alia*, a declaration that his dismissal was null and void. The plaintiff's claim was grounded on his contention that as he was not informed of the possibility of dismissal from service if found guilty of the charges against him, the 1st defendant was in breach of the *audi alteram partem rule*. The defendants, on the other hand, testified that prior to the plaintiff's plea in mitigation, he was informed that he could be dismissed. It was also in evidence that the plaintiff had claimed trial to the charges made out against him and that he had engaged a counsel to represent him at the Orderly Room Proceedings.

Held:

[1] The plaintiff did not plead guilty to the charges but instead claimed trial. Witnesses were called to testify to support the charges. At that stage, the plaintiff need not be informed of the possible punishment or sentence because he was yet to be found guilty. It was only when the plaintiff was found guilty by the 1st defendant after he had entered his defence that he should be informed of the possible sentence. From the testimony of the defendants' witness, this was exactly what was done.

[1a] Further, in the circumstances, the court ought to draw an inference that the plaintiff well knew the possible sentence if found guilty. Had he not known of the outcome if found guilty, he would not have claimed

trial to the charges and engaged a counsel to represent him. Additionally, the plaintiff's counsel would surely have advised him about the case and its outcome, that is, the possible sentence if found guilty.

[2] The charges clearly showed that the plaintiff, if he was found guilty, would face the possible sentences in reg. 2 of Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 and the said sentences ranged from reprimand to dismissal.

[Action dismissed with costs.]

Case(s) referred to:
Ekambaram Savarimuthi v. Ketua Polis Daerah Melaka Tengah & Ors [1997] 2 MLJ 454 ***(dist)***

Legislation referred to:
Public Officers (Conduct and Discipline) Regulations 1993, reg. 28

For the plaintiff - Karpal Singh (M Manoharan with him); M/s Karpal Singh & Co
For the defendants - Ahmad Kamal Md Shahid; FC

Reported by S Dharmendran

JUDGMENT

RK Nathan J:

Facts

The plaintiff until his dismissal, was a Lance/Kpl in the Polis Di Raja Malaysia (PDRM). He was called upon to attend Orderly Room Proceedings on 20 March 1997 to answer four charges under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 (the said Regulations). As a result, the plaintiff was found guilty on the 1st, 3rd and 4th charges and acquitted on the 2nd charge. The plaintiff was subsequently dismissed based on his finding of guilt on the 1st, 3rd and 4th charges respectively.

The Claim

The plaintiff in his statement of claim prayed for the following declarations:

(1) A declaration that the 1st defendant has acted in breach of Reg. 28 of the Public Officers (Conduct and Discipline) Regulations 1993.

(2) A declaration that the plaintiff's dismissal from the PDRM is against the established rules of natural justice.

(3) A declaration that the dismissal of the plaintiff from the PDRM by the 1st defendant on 22 March 1997 (actually it is on 20 March 1997) is null and void, ineffective and of no effect and that the plaintiff is still a member of the PDRM.

The plaintiff also prayed for other consequential reliefs such as an order for an account to be taken of all salaries, emoluments and other benefits the plaintiff is entitled to and that the same be paid to him, for damages to be assessed with interest and costs. There was also a prayer for such other relief the court deemed fit and proper.

Findings Of The Court

The plaintiff only raised 2 issues as gleaned from his statement of claim:

(1) That the plaintiff was not given an opportunity to make a plea in mitigation before the punishment of dismissal was imposed upon him.

(2) That the plaintiff was not informed of the possibility of his dismissal from the service.

On the first issue, the plaintiff had admitted under cross-examination that he was indeed given an opportunity to make a plea in mitigation before sentence was meted out to him. Needless to say on this admission, counsel for the plaintiff did not pursue this issue in his submission. I therefore take it that it has been abandoned.

Not Being Informed Of The Possibility Of Dismissal From Service

The plaintiff contended that by not informing him of the possibility of dismissal, the 1st defendant was in breach of the *audi alteram partem* rule and accordingly, rendering the plaintiff's dismissal null and void. The plaintiff relied on *Ekambaram Savarimuthi v. Ketua Polis Daerah Melaka Tengah & Ors* [1997] 2 MLJ 454.

In *Ekambaram* the plaintiff not being informed of the possibility that he would be dismissed in the event of being found guilty of the charge, pleaded guilty to the charge. Suriyadi J held in that case that by the addendum in A 207, the provision of reg. 28 of Cap D 1993 necessitated that the officer who is to be dismissed or reduced in rank had to be informed of the possible sentence if found guilty and that this applied also to junior police officers and constables. He concluded that by not informing the applicant of the possible dismissal, the tribunal was in breach of the *audi alteram partem* rule.

Regulation 28(1) reads as follows:

> 28.(1) The appropriate Disciplinary Authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature which merits a punishment of dismissal or reduction in rank shall consider all the available information and where it appears that there is a *prima facie* case against the officer for dismissal or reduction in rank, the appropriate Disciplinary Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in rank be sent to the officer and shall call upon him to make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

The addendum in A 207 reads as follows:

> However, where certain provisions under General Orders Cap 'D' are not expressly provided for under the Police Regulations 1970, such provisions under General Orders Cap 'D' shall be applicable to Junior Police Officers and Constables.

In the case before me, the plaintiff did not plead guilty to the charge but instead claimed trial to the charge. Witnesses were called to testify to support the charge. It is my judgment therefore that at this stage, the plaintiff need not be informed of the possible punishment or sentence because at this stage he is yet to be found guilty by the 1st defendant. It is only when the plaintiff is found guilty by the 1st defendant after he had entered his defence, is the plaintiff to be informed of the possible sentence.

In fact, DW1, who held the enquiry, testified as follows:

> 22. S: Adakah anda memaklumkan kepada plaintif sebelum beliau membuat rayuan di dalam mitigasi hukuman yang boleh dijatuhkan ke atasnya setelah plaintif didapati bersalah ke atas pertuduhan pertama, ketiga dan keempat?
>
> J: Ya. Saya ada beritahu plaintif bahawa saya mempunyai kuasa untuk menjatuhkan serendah-rendah hukuman daripada celaan sehinggalah sampai buang kerja.

The above question and answer clearly show that the 1st defendant has complied with all the required procedures pursuant to Regulation 28 of Cap D 1993 and the said Regulations. Therefore, there is no question of the 1st defendant being in breach of the *audi alteram partem rule*. *Ekambaram*'s case, among others, expects the "Pihak Berkuasa Tatatertib" (the 1st defendant in this case) to inform an officer who is to be dismissed or reduced in rank

pursuant to a disciplinary proceeding, of the possible sentence if found guilty. This is exactly what the 1st defendant has done.

Further, considering the surrounding facts of this case, I ought to draw an inference that the plaintiff well knew the possible sentence, if found guilty. The plaintiff took his case seriously by engaging a counsel and claiming trial to all the four charges. Had he not known of the outcome if found guilty, he would not have claimed trial to the charges and engaged a counsel to represent him during the Orderly Room Proceedings.

Unlike *Ekambaram*, the plaintiff in this case had the benefit of having a counsel who surely would have advised him about the case and its outcome, that is, the possible sentence, if found guilty. If at all the plaintiff was prejudiced because his counsel did not inform him of the effect or outcome of the Orderly Room Proceedings or of the possible sentence if found guilty as alleged by him, the fault lies solely with his counsel. Moreover the charges clearly show that the plaintiff if he is found guilty, would face the possible sentences in reg. 2 of the said Regulations. The said sentences range from reprimand to dismissal.

It is my judgment therefore that the 1st defendant has followed all the procedures as laid down in Reg. 28 GO D 1993 and the said Regulations. The plaintiff's action therefore stands dismissed with costs.